# INDUSTRIAL ACTIVITIES

# FACT SHEET

**For National Pollutant Discharge Elimination System (NPDES)**
**and State Waste Discharge Baseline General Permit**
**For**
**Stormwater Discharges Associated With**
**Industrial Activities**

WASHINGTON STATE
DEPARTMENT OF
ECOLOGY

8/02/00

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## Public Involvement Opportunities

**Announcement of Intent to Reissue:**
On May 10, 2000, Ecology sent a letter to permit holders and interested parties informing them of the intent to reissue the industrial stormwater general permit as-is, without change to existing permit requirements. The letter outlined the process and solicited comments on the proposal. A return postcard was also included and those that returned the card were added to the mailing list of parties that wanted ongoing updates on the permitting process. Ecology also announced its intent in the agency newsletter, *Confluence*.

**Public Workshops/ Public Hearings/Public Comment:**

Ecology has tentatively determined to reissue the industrial stormwater general permit to industrial activities as identified in the permit, Special Condition S2. Permit Coverage. The proposed permit contains conditions and requirements as described in the rest of this fact sheet. These conditions and requirements have not been changed from the 1995 permit.

Ecology will publish a Public Notice of Draft (PNOD) on August 2, 2000 in the State Register, the Spokesman Review, the Seattle Daily Journal of Commerce, the Daily Olympian, and the Yakima Herald Republic to inform the public that the draft permit and fact sheet are available for review. The notice will also be mailed to all parties identified above as interested parties. Interested persons are invited to submit written comments regarding the draft permit. The draft permit, fact sheet, and related documents are available for inspection and copying between the hours of 8:00 a.m. and 5:00 p.m. weekdays, by appointment, at Ecology's regional offices listed below. Written comments should be mailed to:

Keith Johnson
Water Quality Program
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Ecology will also conduct a workshop and public hearing at two locations in the state. The first workshop/hearing will be held at Ecology's Eastern Regional Office in Spokane on September 7 beginning at 1:30 p.m. The second workshop/hearing will be held at Ecology's Northwest Regional Office in Bellevue on September 12 beginning at 1:30 p.m. Any interested party may comment on the draft permit or testify at a public hearing on this draft permit. Written comments must be postmarked no later than midnight September 14, 2000 and sent to the address above. Public notice regarding the hearing will be circulated at least thirty (30) days in advance of the hearing. People expressing an interest in this permit will be mailed an individual notice of hearing (WAC 173-220-100).

Comments should reference specific text followed by proposed modification or concern when possible. Comments may address technical issues, accuracy and completeness of information, the scope of the facility's proposed coverage, adequacy of environmental protection, permit conditions, or any other concern that would result from issuance of this permit.

Ecology will consider all oral testimony provided at the public hearings and all written comments postmarked by midnight, Thursday, September 14, 2000. Ecology's response to all significant comments will be available upon request and mailed directly to people expressing an interest in this permit.

Further information may be obtained from Ecology by telephone, (360) 407-6442, or by writing to the address listed above.

This permit and fact sheet are available at Ecology's regional offices:

### *Southwest Regional Office*

Water Quality Program
300 Desmond Drive
Lacey, Washington
Phone: (360) 407-6279

### *Central Regional Office*

Water Quality Program
15 West Yakima Avenue, Suite 200
Yakima, Washington
Phone: (509) 457-7148

### *Northwest Regional Office*

Water Quality Program
3190 - 160th Avenue SE
Bellevue, Washington
Phone: (425) 649-7201

### *Eastern Regional Office*

Water Quality Program
N. 4601 Monroe, Suite 202
Spokane, Washington
Phone: (509) 456-6310

## Background

In 1972, the Federal Water Pollution Control Act (also referred to as the Clean Water Act) was amended to provide that the discharge of any pollutants to waters of the United States from any point source is unlawful, unless the discharge is in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. NPDES permits are issued by the United States Environmental Protection Agency (USEPA), or by state agencies which have been delegated NPDES permit authority by USEPA.

In 1987, Congress added section 402(p) to the Clean Water Act to establish a comprehensive framework for addressing municipal and industrial stormwater discharges under the NPDES permit program. Section 402(p)(4) of the Clean Water Act clarifies the requirement for USEPA and delegated state agencies to issue NPDES permits for stormwater discharges associated with industrial activity.

On November 16, 1990 (55 FR 47990), USEPA published final regulations on stormwater. (For purposes of this permit, Ecology has defined stormwater as rainfall and snowmelt runoff.) Additional rules related to stormwater permitting were published on April 2, 1992 (57 FR 11394). The goals of these stormwater regulations are to:

- Establish a permit system for stormwater discharged from industrial and construction sites;
- Eliminate water quality standards violations caused by stormwater discharges;
- Stop the illegal discharge of waste waters and other pollutants into storm drains;
- Reduce the amount of pollutants washed off in stormwater discharges; and
- Establish a permit system for stormwater discharged by municipalities over 100,000 in population.

The federal regulations require an NPDES permit for listed industrial facilities and those construction activities which will disturb five or more acres of land, that discharge "stormwater associated with industrial activities" directly to surface waters, or indirectly through municipal storm drains. The regulations include a definition of "stormwater associated with industrial activity," and a listing of application requirements for stormwater permits.

The USEPA regulations allow state agencies which have been delegated NPDES permit authority to issue individual permits and general permits to regulate the discharge of stormwater. The Washington Department of Ecology (Ecology), as a delegated NPDES state agency, is responsible for implementing the USEPA requirements for stormwater permits in Washington State.

Ecology issued its baseline stormwater general permit on November 18, 1992 which covered industrial and construction activities. When reissued in 1995, Ecology decided to take a limited approach due to time limitations and uncertainties on future stormwater permitting strategy. The minimal approach included issuing separate permits

for industrial and construction activities, increasing the permit cycle to five years, and excluding mandatory effluent limits and sampling and analysis. Ecology considered the input of an advisory committee in developing the 1995 baseline general permit for stormwater discharges from industrial and construction activities. Advisory committee members were selected by Ecology from a list of volunteers. The committee included 36 representatives of small and large industries, consultants, environmental organizations, city and county governments, state agencies, business associations, and special purpose districts. Ecology issued the Industrial Stormwater General Permit on November 18, 1995.

The industrial stormwater general permit proposed for reissue on October 4, 2000 is based on the 1995 permit. There have been no substantive changes to the permit requirements. The only changes made were to make the permit consistent with the revised timeframe, effective as of November 18, 2000 and expiring November 18, 2005.

## Ecology's Approach to Permit Reissuance

There are currently about 1200 permittees with coverage under the industrial stormwater general permit. The existing stormwater general permit expires on November 18, 2000. It is critical that Ecology has a replacement permit in place when the industrial stormwater general permit expires. The November date however, did not work well for implementing the new requirements under "Phase II Storm Water Regulations" that were published by the Environmental Protection Agency (EPA) in December 1999. Implementation of permitting for municipal facilities that were exempt under EPA's 1990 regulations, for instance, is not required under Phase II until March 2003. In order to proceed as efficiently as possible and avoid doing the same work twice, Ecology decided to make revising and reissuing this permit a two step process:

**Step 1: Reissue the permits "As-Is"**

No changes were made to the current permit language other than to reflect the new issuance and effective dates and make permit language consistent with this new timeframe. The reissued permit will become effective November 18, 2000 and will expire November 18, 2005.

**Step 2: Revise and Renew the Permits**

Immediately after completing the reissue of these permits, Ecology will begin the process to fully consider the stormwater issues associated with this permit and revise the permit as necessary. Ecology will also implement EPA's Phase II Storm Water Regulations as they apply to this permit. Ecology plans to revise and reissue the permit before March 10, 2003, replacing the existing permit before its expiration date and complying with EPA implementation deadlines.

**Continuing the General Permit Approach**

A general permit approach for industrial stormwater is an appropriate permitting approach for the following reasons:

- A general permit is the most efficient method to handle the large number of industrial stormwater permit applications;
- The application requirements for coverage under a general permit are far less rigorous than individual permit application requirements;
- A general permit is consistent with USEPA's four-tier permitting strategy, the purpose of which is to use the flexibility provided by the Clean Water Act in designing a workable and reasonable permitting system;
- A general permit is an efficient method to establish minimum regulatory requirements that are appropriate for a broad base of industrial activities;
- A general permit is the most practical way to apply Ecology's limited resources for implementing the federal stormwater regulations.

## Industrial Baseline General Permit is a NPDES and a State Waste Discharge Permit

In addition to the USEPA delegated authority to issue NPDES permits, Ecology also has the authority under state law to issue state waste discharge permits for discharges to state surface waters, ground waters, and municipal sewer systems. This industrial stormwater general permit is issued under both authorities.

This allows Ecology to not only regulate stormwater discharges to surface waters under the permit, but also to regulate stormwater discharges to the ground. However, Ecology will not regulate under this permit those industrial activities which discharge stormwater **only** to the ground. Ecology will regulate under this permit, those operations which have a stormwater discharge to the ground, only if they also have a stormwater discharge to a surface water, a municipal storm drain, or a privately owned storm drain which discharges to surface water.

## Description and Rationale for the Baseline Industrial Stormwater General Permit Conditions

This general permit requires the permittees to identify and control stormwater pollutant sources from their operations. This permit also requires the application of technology-based BMPs for listed industrial activities (see Appendix #1-section C of the permit), and other industries subject to the federal stormwater regulation.

The pollutant control, inspections, and standards provisions of this permit include specific requirements as well as references to technical guidance. Each discharger will be able to select those BMPs best suited for reducing pollutants in its stormwater based on site-specific conditions. A Stormwater Pollution Prevention Plan (SWPPP), to be developed and maintained by industrial facilities and retained on-site for inspection by Ecology, must include: an assessment and description of existing and potential pollutant sources; a description of the BMPs selected for the facility; and an implementation schedule for the BMPs.

SWPPPs should not be confused with other regulatory requirements for pollution prevention, such as the industrial Pollution Prevention Plans for hazardous materials and waste reduction required by the state Hazardous Waste Reduction Act. Facilities which must develop similar pollution prevention plans should look for areas of overlap in these plans and incorporate them into the SWPPP.

**Discussion of Permit Conditions**

**S1-Schedule of Compliance**

A. Facilities Needing to Apply for Permit Coverage

This Special Condition addresses permit Notice of Intent (application) and SWPPP implementation deadlines for the new and existing industrial facilities. Existing industrial facilities are defined as those that were in operation before November 18, 1995.

B. Notice of Intent (application) Deadlines

- For new industrial facilities, at least 38 days prior to the commencement of the industrial activity at the facility;
- For facilities determined to be significant contributors of pollutants, facilities found to be in violation of NPDES stormwater application submission requirements, and facilities determined to have a primary activity listed in the industrial categories of facilities in Appendix #1-Section C regardless of the SIC code of the facility ownership, within 30 days of notification by Ecology.

C. SWPPP Implementation Deadlines

New industrial facilities shall have the SWPPP completed and implemented prior to commencement of any stormwater discharge(s).

Existing facilities determined to be significant contributors of pollutants, and facilities whose primary activity is listed in Appendix #1-Section C regardless of the facility ownership, shall be allowed:

- **90 days** to assess pollutant sources, determine the existence of nonstormwater discharges (including appropriate studies), select appropriate BMPs, and write the SWPPP for their facility;
- **Nine months** to implement the appropriate operational and source control BMPs, including good housekeeping measures, employee training, equipment repairs, management coordination, and approvals;
- N**ine months** to complete construction plans for BMPs requiring capital improvements;
- **18 months** for the completion of BMPs that require "capital improvements" (see definition in permit) for source control or treatment BMPs, or manufacturing changes.

It is considered reasonable to require these facilities to accelerate the time for the planning, engineering, and management approval of these plans, procurement, construction, and startup of the capital improvements. These facilities will have more guidance available and will need to be expeditious in implementing their SWPPP. Therefore, Ecology believes that 18 months to achieve compliance with the requirements of this permit is reasonable. However, facilities in violation of permit application or SWPPP requirements will be given an expeditious schedule to develop and implement a SWPPP not to exceed the above schedule.

D. Auxiliary Facilities Needing a NPDES Permit Regardless of the SIC of the Ownership

Ecology has added a new category of industrial facility which will be required to obtain permit coverage. It is a facility whose primary activity is within the industrial categories listed in Appendix #1-Section C regardless of the SIC code of its ownership. Previously an offsite (auxiliary) facility would be assigned the SIC code of its ownership or business and if that was a SIC code not listed in Appendix #1-Section C then it would not be required to obtain permit coverage. Ecology is interpreting the federal regulations to include facilities based on the primary activity at each industrial facility, and not the primary business, or SIC code of the owner or operator of the facility.

An example of this new approach is a stormwater discharge from an auxiliary offsite distribution center engaged in trucking (with a maintenance shop) activity for a supermarket chain. According to the SIC manual the trucking would be auxiliary to the supermarket business and, for economic or business purposes, would be assigned the SIC code of the supermarket chain, which is SIC 5411. SIC 5411 is not included among the categories of industrial facilities in Appendix #1-Section C, so the trucking maintenance shop would not be required to obtain permit coverage.

However, this permit requires that Ecology consider permit coverage requirements for the primary activity of the auxiliary trucking facility regardless of the SIC code of the supermarket chain. Therefore, the auxiliary (offsite) trucking activity would be required to obtain permit coverage because it is an auxiliary primary activity which is one of the listed industrial categories (transportation) in Appendix #1-Section C.

E. SEPA and Public Notice Requirements for New Facilities

S1 includes compliance with the public notice and SEPA requirements for new facilities. In accordance with Chapter 173-222 WAC Ecology has to allow 30 days for public comment prior to approving permit coverage.

## S2 Permit Coverage

This section explains how to obtain coverage under the permit; who is required to apply for coverage; who is not required (but may) apply for coverage; and who is excluded from coverage under this permit.

A. How to Obtain Coverage

Please refer to the section entitled "How and Where to Apply for Coverage Under this Permit," in this fact sheet on page 16.

B. Facilities Required to Seek Coverage

The industrial categories of facilities regulated by this permit are listed in 40 CFR Subpart 122.26 (b)(14) (see Appendix #1-Section C of the industrial stormwater general permit) with the exception of those facilities for which federal Effluent Limitations Guidelines, New Source Performance Standards, or Toxic Pollutant Effluent Standards, for stormwater have been promulgated (see Appendix #1-Section D). Facilities with existing effluent limitations guidelines for stormwater are excluded because this general permit does not include effluent limits or monitoring requirements. These facilities should be permitted under individual or industry-specific general NPDES permits.

Many industries regulated by this permit are identified by their SIC code. The SIC codes for specific industries can be located in the 1987 issue of the "Standard Industrial Classification Manual" prepared by the federal Office of Management and Budget. Major industrial categories are listed using two digit codes and subcategories of industries are listed using three and four digit codes. For example, SIC 24 is a code for a major industry, Lumber and Wood Products (except Furniture); 242 is the code for a subcategory, Sawmills and Planing Mills; 2426 is a subcategory of SIC 242, Hardwood Dimension and Flooring Mills.

The following is a summary of those categories of industrial facilities which are covered under this general permit as required in 40 CFR 122.26(b)(14) with the exception of category 1, which is excluded because these categories of facilities are subject to stormwater effluent limitations guidelines or standards, and category 10 which is covered by a separate construction activity general permit:

| **Category** | **Description** |
|---|---|
| 2. | Facilities in Standard Industrial Classification (SIC) codes 24, 26, 28, 29, 311, 3441, 373; excluded from this category are SIC 2434, 265, 267, 283, 285, 2951, 323 and 3273; |
| 3. | Mining and oil and gas facilities in SIC codes 10, 12, 13, and 14; except SIC codes 1411, 1422, 1423, 1429, 1442, 1445, 1446, 1459, and 1499 which are covered under a Sand and Gravel general permit; |
| 4. | Hazardous waste treatment, storage, or disposal facilities; |
| 5. | Landfills, land application sites, and open dumps that receive or have received industrial wastes; |
| 6. | Recycling facilities including metal scrap yards, battery reclaimers, salvage yards, and automobile recyclers; |
| 7. | Steam electric power generating facilities; |
| 8. | Transportation facilities in SIC codes 40 through 45, and 5171, which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations; except SIC codes 4221, 4222, and 4225. |
| 9. | Sewage treatment plants with a design flow of 1.0 million gallons per day or more, or which are required to have an approved industrial pretreatment program; |
| 11. | Facilities listed in SIC codes 20 through 42, not otherwise listed above, which have an industrial activity exposed to stormwater. Included in this category are SIC codes 2434, 265, 267, 283, 285, and 323. |

Facilities in the above categories which have permit requirements addressing the management and/or treatment for all of their industrial stormwater in an existing NPDES permit should not apply for coverage under this Baseline General Permit.

This section of the permit also describes (Special Condition S2.B.) types of industrial facilities which are required to seek permit coverage because their coverage requirements were either controversial or unclear.

C. Areas of Industrial Activity

For the industries identified in categories 2) through 9) above, a permit is necessary if there is a stormwater discharge to a surface water, or to a municipal storm drain or a private storm drain which discharge to a surface water from any of the following areas:

- Industrial plant yards;
- Immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts used or created by the facility;
- Material handling sites;
- Refuse sites;
- Sites used for the application or disposal of process waste waters (as defined at 40 CFR part 401);
- Sites used for the storage and maintenance of material handling equipment;
- Sites used for residual treatment, storage, or disposal;
- Shipping and receiving areas;
- Manufacturing buildings;
- Storage areas (including tank farms) for raw materials, and intermediate and finished products;
- Areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater.

For the industries identified in category (11), a permit is required for point source discharges from any of the areas that are listed above (except access roads and rail lines ), only if material handling equipment or activities, raw materials, intermediate products, final products, waste materials, byproducts, or industrial machinery are exposed to stormwater.

D. Conditional Coverage Under this Permit

For facilities which have failed to apply for required permit coverage and for facilities which have reapplied for coverage but have not complied with SWPPP and BMP requirements of the stormwater general permit, Ecology will provide permit coverage conditional on completion of required SWPPP and BMPs. The permit requires that these types of facilities achieve compliance as expeditiously as possible, but no later than the schedule in Special Condition S1.

E. Coverage for Significant Contributors of Stormwater Pollutants

This section was added to the permit to expressly authorize Ecology to regulate stormwater dischargers which are "significant contributors of pollutants" and which otherwise would not be permitted. The federal Clean Water Act at Section 402(p)(2)(E) gives the state this authority. Ecology, not the discharger, decides whether there is a significant contribution of pollutants warranting coverage under this permit.

F. Coverage for Discharges to Ground Water

This section specifies that the permit terms and conditions apply to all stormwater discharges, including discharges to the ground, from a facility or site which has a discharge of stormwater to a surface water or a storm sewer and is required to obtain NPDES permit coverage. Ground water quality standards (Chapter 173-200 WAC) requires that permits be conditioned to require the meeting of ground water quality standards.

G. Facilities Not Required to Apply

This is a listing of facilities which are not required to apply for coverage under this permit based on federal law, regulations, or guidance.

However, facilities which wish to seek coverage under this permit, may do so by submitting a Notice of Intent to Ecology. Ecology will then consider the application, but reserves the right to refuse coverage. An example situation

in which Ecology will likely refuse coverage is for CERCLA sites whose stormwater discharges are being regulated under a consent decree or order issued by Ecology or USEPA.

Facilities not required to seek coverage shall submit a cover letter with their Notice of Intent explaining why they are seeking coverage under this permit.

H. Facilities EXCLUDED from Coverage Under This Permit

These are facilities which Ecology will not consider for coverage under this permit.

Facilities with federal stormwater effluent limitations guidelines are excluded because this general permit does not include effluent limits. In Appendix 1-Section D of this permit Ecology has consolidated and clarified which industrial categories or pollutants are excluded from coverage under this permit because they are subject to stormwater pollutant effluent limits in federal regulations. In addition, most of these facilities have a process waste water discharge for which they need a separate permit, or they have a mixture of process waste water and stormwater discharge which cannot be completely covered by this permit.

I. Clarification of the Term, Point Source

To be eligible for coverage under this General Permit, a facility must have a point source discharge to a surface water of the state or to a municipal storm drain or a private storm drain which discharges to a surface water. A point source is defined as:

> *any discernible, confined, and discrete conveyance, including but limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, and container from which pollutants are or may be discharged to surface waters of the state. This term does not include return flows from irrigated agriculture.*

Stormwater may be discharged in a number of obvious ways including pipes, channels, and drainage ditches. But stormwater discharges can also be small rivulets in wheel rutted roads, small swales, or other depressions in the ground. Even "sheet flow," like that across a flat area, is considered a stormwater discharge if it ends up in a storm drain or a surface water. Surface waters include, lakes, rivers, ponds, streams, inland waters, and salt waters. Dry draws or intermittent streams, and roadside ditches are sometimes classified as surface waters. Surface waters can be man-made or natural, seasonal or year-round.

Ecology intends to embrace the broadest possible definition of point source consistent with the legislative intent of the Clean Water Act and pertinent court interpretations to include any identifiable conveyance from which pollutants might enter the waters of the state. If the stormwater runoff converges or can converge into a discrete conveyance it will be considered a point source and subject to NPDES stormwater permit application requirements.

In most court decisions interpreting "point source," the term has been interpreted broadly. For example, the holding in Sierra Club v. Abston Construction Company, Incorporated, 620 F.2d 41 (5th Cir. 1980) indicates that changing the surface of land or establishing grading patterns on land will result in a point source where the runoff from the site is ultimately discharged to waters of the United States. The following is an excerpt from that court ruling:

> "Conveyances of pollution formed either as a result of natural erosion or by material means, and which constitute a component of a drainage system, may fit the statutory definition and thereby subject the operators to liability under the Act. 620 F.2d at 45."

**S3 Authorized Discharges**

This special condition specifies the types of stormwater discharges to stormwater conveyance systems which are authorized by this permit. They include stormwater discharges to new conveyances constructed after the issuance

date of this permit if they have received all applicable state and local permits and use authorizations, including compliance with the State Environmental Policy Act (Chapter 43.21C RCW).

Nonstormwater discharges such as landscape irrigation, rising ground waters, uncontaminated ground water infiltration to separate storm sewers, etc. will not be authorized by this permit because this permit authorizes only stormwater discharges and these types of discharges typically do not contain pollutants and are typically not permitted. However, such discharges should be assessed in accordance with Special Condition S9.D.1. If any of these types of discharges contain pollutants that commingle with stormwater, then appropriate BMPs should be applied and Ecology should be contacted regarding the need for a separate permit.

**S4 Discharge Prohibitions**

This section prohibits the following discharges:

- Process wastewater, domestic wastewater, or noncontact cooling water to a storm drain or to surface water unless it is covered under an appropriate discharge permit;
- Stormwater to sanitary or combined sewers unless approved by the municipality receiving the stormwater – This is necessary to limit the dilution of sanitary wastewater and the hydraulic loading of sanitary sewers and treatment plants;
- Illicit discharges, which are nonstormwater discharges, including spills of oil and hazardous substances – This prohibited discharge section was added to make it clear that this permit does not relieve those responsible for illicit discharges from responsibilities under state and federal laws and regulations, including those related to natural resources damage assessments (e.g., comprehensive Environmental Response, Compensation, and Liability Act [CERCLA] and the Oil Pollution Act of 1990 [OPA]).

**S5 Compliance with Standards**

Facilities which discharge industrial stormwater are subject to all applicable state water quality and sediment management standards and the human health criteria in the National Toxics Rule (Federal Register, Vol. 57, No, 246, Dec. 22, 1992). The ultimate goal is for permittees to achieve compliance with these standards and rule.

Facilities that are in compliance must remain in compliance. For facilities which are not in compliance, Ecology recognizes that an enforceable compliance schedule is necessary to achieve compliance. The existence of a SWPPP compliance schedule precludes enforcement for standards violations except that Ecology reserves the right to require more immediate and more stringent measures that are warranted due to obvious and severe violations. Such requirements could be implemented through specific permits, orders, or decrees. Ecology expects that compliance with standards will be achieved through the implementation of the SWPPP and Special Condition S7 of this permit. Compliance with the SWPPP requirements of this permit will be considered an ongoing effort toward achieving compliance.

Discharges of industrial stormwater must meet all applicable provisions of Sections 301 (Effluent Limitations) and 402 (National Pollutant Discharge Elimination System) of the Clean Water Act. These provisions require control of pollutant discharges to a level equivalent to Best Available Technology Economically Achievable (BAT) for toxic and unconventional pollutants, and Best Conventional Pollutant Control Technology (BCT) for conventional pollutants, and any more stringent limitations necessary to meet water quality standards. In addition, state law requires discharges to apply all known, available, and reasonable (methods) of treatment (AKART) to prevent and control the pollution of the waters of the state of Washington. State law also requires any other more stringent limitations necessary to meet all applicable state standards.

The requirements of this permit are narrative. The permit requires the development and implementation of a SWPPP which includes BMPs to prevent pollution by stormwater and to reduce the amount of pollutants discharged. USEPA has proposed that implementing BMPs constitutes BAT and BCT for most industrial stormwater. Ecology

considers that development of the SWPPP and implementation of available and reasonable BMPs constitutes implementation of AKART.

In this permit, Ecology requires permittees to make a judgment of which BMPs are necessary to achieve compliance with BAT and BCT requirements of federal laws, as well as the AKART requirements of state law. Although Ecology will not review the vast majority of SWPPPs prior to their implementation, it reserves the right to review those plans and require additional measures to prevent and control pollution.

Ecology anticipates that the implementation of available and reasonable BMPs will be all that is necessary for many industries to adequately control any water quality impacts and, thus, to achieve compliance with standards. In some cases, that may not be true. However, Ecology has neither the basis nor the capacity to make that decision on a case-by-case basis for the thousands of industries that are regulated by this permit.

In summary, Ecology's permitting strategy to achieve compliance with standards is to:

1) Require, in Special Condition S5 (Compliance with Standards), that facilities which are not in compliance achieve compliance through development, implementation and maintenance of a SWPPP and implementation of Special Condition S7 of this permit. The ultimate goal is for permittees covered under this permit to achieve compliance with state of Washington surface water quality standards (Chapter 173-201A WAC), sediment management standards (Chapter 173-294 WAC), ground water quality standards (Chapter 173-200 WAC), and the human health based criteria of the National Toxics Rule (Federal Register, Vol. 57, No. 246, Dec. 22, 1992, pages 60848-60923).

   Note: This approach meets legal requirements, allows Ecology to take appropriate action where needed, and as necessary, reminds facilities that they are in compliance with the standards, and that the permit does not allow them to get out of compliance.

2) Require maintaining the SWPPP by current permittees and development and implementation of the SWPPP before commencement of discharge(s) from new facilities.

3) Review industries covered by this permit to rate their potential for violating standards, even though they have implemented available and reasonable technology-based BMPs (see Special Condition S7-Assessment of the Potential for Standards Violations by Industrial Facilities).

4) Consider monitoring requirements or guidance for facilities with a high potential for violating standards to verify compliance/noncompliance.

5) Modify or reissue the permit to require implementation of 3 and 4 above.

6) Use administrative enforcement discretion, and generally not enforce compliance with standards until the permit approach outlined above has run its course, except in cases where action is needed for the protection of human health or where standards violations require more immediate action due to obvious and severe violations.

**S6 Sampling and Analysis**

Ecology does not require monitoring (i.e., sampling and analysis of stormwater) in this permit. Because this is a baseline permit, it applies to facilities of all types and sizes. At this time, Ecology does not consider monitoring necessary for many facilities, and expects that many facilities, through implementation of BMPs, have or will have minimized their potential for discharging pollutants.

Monitoring of stormwater raises a number of questions that Ecology is not prepared to address in a generic fashion. Proper sample collection and the variable nature of stormwater quality and quantity from each site are two examples.

How to apply data collected as a result of monitoring requirements and defining the point of compliance are also difficult issues. Ecology will continue to pursue these issues.

Although we are not requiring stormwater sampling and analysis, Ecology encourages permittees to do so. Despite the myriad of issues mentioned above, monitoring can provide important information about the sources and types of pollutants in stormwater. This information can be useful when designing, modifying or evaluating the effectiveness of BMPs.

If permittees choose to conduct sampling and analysis of stormwater discharges we encourage them to follow the referenced sampling and analysis procedures in this permit. Doing so may make additional sampling unnecessary in the future when verification of compliance with standards may be required. Following the recommended procedures will also help in establishing a base of comparable stormwater data which could have various benefits to the discharger and to the environment.

**S7 Assessment of the Potential for Standards Violations by Industrial Facilities**

This permit may be modified before its expiration date of November 18, 2005, to require an assessment by the permittees of the potential for stormwater discharges to violate standards. Those dischargers with a high potential to violate standards will then be required to develop and implement a monitoring program.

Ecology plans to provide technical guidance for conducting the assessment of the potential to violate standards and monitoring. Ecology believes that the assessment is needed to prioritize the large number of industrial facilities based on their pollution impact and the need for monitoring. Ecology intends to develop the assessment procedures with the input of an advisory committee. In providing the guidance for assessing the potential to violate standards, Ecology may consider the sensitivity and quality of the receiving waters, including lakes .

**S8 Permit Fees**

State law requires Ecology to recover the cost of the Water Quality Permit Program. Fees will be set in fee regulation (Chapter 173-224 WAC). There will be opportunities for public comment on any new fee proposals.

**S9 Stormwater Pollution Prevention Plan (SWPPP) for Industrial Facilities**

The following are explanations of several sections of this special condition:

S9 includes information and requirements on the application of the 1992 and future editions of the Stormwater Management Manual for the Puget Sound Basin (SWMM) and other equivalent stormwater management manuals for the selection of BMPs. Equivalent local government, as well as other equivalent manuals, will be acceptable as long as the effectiveness of the equivalent BMP results in equal to or better quality of stormwater discharge(s) to surface water or storm conveyances. Ecology is currently updating the SWMM and the revised manual for western Washington will replace the 1992 version. Existing facilities will not be required to update their BMPs based on the revised manual unless there are other reasons that compel them to implement new BMPs (such as facility expansion). Ecology will provide a reference document to correlate the BMP numbering of the new manual with the permit references to specific BMPs in the old manual after the new manual is final.

The SWMM represents a recipe book from which site-specific BMPs are selected. The SWMM and the permit also include the option of permittees selecting equivalent BMPs and as described above. The permittee or a permit applicant shall use the latest edition of the SWMM within 120 days of its availability, whenever BMP selection is required. The permittee shall modify the SWPPP in two weeks for noncapital BMPs and within six months for capital BMPs. Two weeks is believed to be sufficient to decide on modifications of noncapital BMPs such as

inspections, good housekeeping, minor equipment changes, etc. Capital BMP modification may require engineering design, management review and approval, etc. which could take several months.

A. Objectives:

Developing, implementing, and maintaining the technology-based SWPPP constitutes the program of control of stormwater pollution by industrial activities. The objectives include; the implementation and maintenance of BMPs, the ultimate goal of the prevention of the violation of standards, and the elimination of illicit discharges.

An additional objective of this permit is stormwater runoff quantity control. Although Ecology's SWMM provides the basis for such control, Ecology has decided to include specific requirements in this permit to ensure that adequate controls will be implemented, when needed. Ecology believes that such controls are necessary to prevent streambank erosion and to protect fish habitat and wetlands, as well as other beneficial uses of state waters which could be adversely impacted by high peak stormwater runoff rates and volumes. Ecology also believes that an adequate assessment of pollutant loads, if needed, should include stormwater discharge quantities.

B. General Requirements:

The operator of an industrial facility shall be the permittee. Operators have day-to-day control over the facility's operation. Where the operator is not the owner of the facility, the operator should check with the owner before implementing BMPs that involve modifying the facility or its grounds.

Permittees are to retain the SWPPP on-site. They are not to submit it to Ecology. The SWPPP shall be modified whenever appropriate because of changes at the facility, or whenever a self-inspection shows the plan to be inadequate as required in the permit. The intent of these conditions is to make the SWPPP relevant to the facility's operation, and to make operators reassess on a regular basis, what they can do to improve pollution control at their facility. The SWPPP shall be made available to Ecology upon request. Ecology will make copies of SWPPPs available to the public on request.

D. SWPPP Contents and Requirements

1. Assessment:

The permittee shall first assess and describe the existing and potential pollutant sources at the facility. The assessment shall include:

- An investigation of the presence of any discharge other than stormwater. Such discharges are to be eliminated in accordance with Special Conditions S4 and S9.D.1.a.;
- Development of a site map depicting the discharges, drainages, the facility's structures, and areas of pollutant contact. The map for smaller businesses can be a plan view on a single sheet;
- A listing of potential and existing pollutants which may be present in significant amounts. The term "significant amounts" means any amounts of pollutants in a discharge which are amenable to available and reasonable treatment or prevention, or which have a reasonable potential to cause a violation of standards. In practical terms, if permittees can take reasonable measures to reduce the presence or to reduce the potential for the presence of a pollutants in stormwater, they are required to do so;
- An identification of areas which have been or may be sources of pollution.

Special Condition S9.D.1.a. requires an assessment of nonstormwater discharges. Although the assessment should focus on identification of process wastewaters that may exist, other nonstormwater discharges including landscape irrigation, rising ground waters, uncontaminated ground water infiltration to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources including water line flushing, foundation drains, air conditioning and refrigeration condensation, springs, water from crawl space pumps, footing drains, lawn watering, fire hydrant flushing, and discharges or flows from fire fighting activities, etc. should also be assessed. These types of discharges typically do not contain pollutants. However, in some cases, insoluble solids, pesticides, fertilizers,

and other compounds may be present in these types of discharges and, therefore, can be sources of stormwater pollutants when they commingle with stormwater. See also comments on S3.

2. Selection and Description of BMPs

Selecting the appropriate BMPs and maintaining the BMPs will be an important and major element of the SWPPP. For this reason, Ecology is including several operational and source control BMPs (or their equivalent in pollution control) in this permit as minimum requirements. The SWPPP must include a discussion of how the six operational BMPs will be implemented and maintained. For example, every facility's SWPPP should include a spill prevention and emergency cleanup plan.

Operational BMP requirements (see S9.D.2.a.) include two annual inspections by the permittee, one during the wet season and the other during the dry season. The wet season inspection will be a visual inspection to verify that the pollutant sources in the SWPPP are accurate and that the pollutant controls are adequate. It must be conducted during a rainfall event. Observations of floating materials, visible sheen, color, oil and grease, turbidity, and odor in the stormwater conveyances provide a basis for assessment of the adequacy of the SWPPP. The dry season inspection is to determine the presence of nonstormwater discharges to storm sewers. It must be conducted on a day without precipitation. This determination is one of the requirements of the SWPPP. Records of all inspections must be maintained in accordance with the requirements of this permit.

The SWPPP must also identify appropriate source control BMPs (see S9.D.2.b. of the permit). For example, if a facility has a fueling station and outside storage of liquid chemicals, it would be required to implement BMPs S1.10 (Fueling Stations) and S1.60 (Outside Storage of Raw Materials, By-Products or Finished Products) from the SWMM, or equivalent BMPs, to control stormwater pollution from that area. Permittees should note that they are required to implement BMPs for other types of industrial activities and sites listed in the first two paragraphs of Appendix A, if they are potential sources of significant amounts of pollutants. Each facility is also required to identify areas which have erosion problems or the potential for erosion problems, and develop appropriate erosion control measures.

Design criteria for the source control BMPs listed in the permit, and consideration of additional BMPs may be obtained from Ecology's SWMM, or equivalent manual. The SWMM provides information on pollution sources for certain industrial categories listed according to their SIC code, a list of source control and treatment BMPs applicable to specific industries, and design information, including drawings for source control and treatment BMPs. BMPs for construction sites at industrial facilities covered by this permit are also available in the SWMM. Design information is located in the following volumes of the SWMM: Volume II for erosion control BMPs; Volume III for treatment BMPs; and Volume IV for source control BMPs.

Ecology recognizes the need to include specific BMP requirements for stormwater runoff quantity control to protect beneficial water uses, including fish habitat. Therefore, Special Condition S9 of this permit also requires that the SWPPP include stormwater quantity control BMPs. Volumes I (Minimum Technical Requirements) and III of the SWMM shall be considered for the selection of appropriate runoff control BMPs, or BMPs which will result in equivalent stormwater runoff quantity control.

The SWPPP should also include additional available and reasonable BMPs, including treatment BMPs, if in the judgment of the permittee they are necessary to prevent the discharge of significant amounts of pollutants. Discharge targets may be used by the permittee as guidance for the application of additional available and reasonable BMPs. In those cases where BMPs listed in available references are not adequate, innovative BMPs may also be considered.

3. The Application of Significant Amounts

The application of significant amounts of pollutants is the basis for selecting additional BMPs.

The permittee must first apply available and reasonable BMPs to reduce the levels of pollutants (see S 9.d.2.). Operational and source control BMPs shall be considered. If, after implementing these BMPs, they are insufficient to prevent or remove all pollutants amenable to available and reasonable BMPs then additional available and

reasonable BMPs shall be selected. If, after implementing those additional BMPs, in the judgment of the permittee, there is a concern that the stormwater discharge(s) has the potential to cause a violation of standards, then the permittee is strongly encouraged to provide additional available and reasonable BMPs, including treatment and innovative BMPs.

For example, if the permittee voluntarily samples the stormwater discharge and finds a heavy metal(s) that significantly exceed(s) surface water quality standard(s) the permittee should consider additional BMPs to control the metal(s) discharge.

To provide guidance to the permittee in assessing whether available and reasonable BMPs are adequate and to provide BMP design objectives this permit includes discharge targets, or effluent goals for several pollutants. The discharge targets developed so far for several pollutants are as follows:

- Oil and grease: maximums of 10 mg/L on a daily or 24 hour basis, 15 mg/L at any time, and no ongoing or frequently recurring visible sheen;
- Settleable solids: maximum of 0.1 ml/L (based on a one hour settling time);
- pH: between 6 and 9 (grab sample basis).

These discharge targets may be used as criteria for the application of additional available and reasonable BMPs. They are not enforceable effluent limits. However, achieving discharge targets could be considered as a measure of a good-faith effort to achieve the control of pollutants that are amenable to available and reasonable BMPs. Discharge targets for other pollutants may be needed on case-by-case basis, as appropriate. Ecology may add to the list of discharge targets over time by permit modification. If discharge targets are achieved and there remains a concern that standards will be violated additional BMPs shall be considered by the permittee.

4. BMP Guidance for Specific Industries

With the assistance of Technical Advisory Committees which included representatives of permittees, consultants, local governments and business associations Ecology developed BMP selection guidance documents for vehicle recyclers and industries with log yards. These guidance documents tailor operational, source control, and treatment BMPs to control pollutants typically expected at these types of industrial facilities. The selection of these BMPs was based on the consideration of which BMPs are available and reasonable. Also included in these guidance documents are specific discharge targets for pollutants expected at these facilities.

This permit includes the requirement that BMPs for vehicle recyclers and log yards shall be selected from these BMP guidance documents. The guidance documents include BMP options for several industrial activities and for the consideration of equivalent BMPs.

5. Implementation Schedule

All facilities covered by this permit are required to include an implementation schedule in the SWPPP. This schedule should include target completion dates for the BMPs listed in the SWPPP so that implementation progress can be assessed.

## S10 Solid and Liquid Waste Disposal

This condition is intended to ensure that disposal and handling of solid or liquid wastes generated to comply with the requirements of this permit do not result in a violation of applicable solid and hazardous waste regulations (Chapter 173-303 WAC-Dangerous Waste Regulations and 173-304 WAC-Minimum Functional Standards For Solid Waste Handling). It is expected that containment, collection, separation and settling are some of the control techniques for stormwater which will result in the generation of solid and liquid wastes. In some cases, management and housekeeping techniques could also generate solid and liquid wastes. Examples include drip traps, cleanup of

process areas, and spill removal. Therefore, Ecology views this permit requirement as an important component of the overall stormwater pollution control strategy.

**S11 Notice of Termination (NOT)**

A Notice of Termination for an industrial facility will virtually end the permit coverage and responsibility of the permittee(s) to be subject to the conditions of the permit. The permittee is responsible for submitting the notice in order to end permit coverage. Unless the permit is terminated, Ecology will continue to assess a fee for the permit. A NOT form is attached to the permit. Ecology added the requirement to include a transmittal letter with the NOT submission. The transmittal letter will provide a brief description of the change(s) resulting in the cessation of the stormwater discharge. Ecology also added to G19 the requirement that all records generated in compliance with the permit requirements of this permit shall be retained for three years after permit termination.

**S12 Determination of Primary Activity**

As explained earlier in this fact sheet, this permit requires permit coverage if an auxiliary (off-site) facility's primary activity is among the categories listed in Appendix #1-Section C, regardless of the SIC code of its ownership. Special Condition S12 authorizes Ecology to determine which auxiliary primary activities would be required to obtain permit coverage on this basis. This approach may change the permit coverage requirements for some auxiliary facilities whose ownership is classified under a SIC code not listed among the categories in Appendix #1-Section C.

**General Conditions**

The General Conditions of this permit are requirements based on federal or state laws and regulations which must be included in all NPDES general permits, either expressly or by reference. Ecology has decided to incorporate the relevant requirements of federal and state law expressly.

General Conditions G2 (Proper Operation and Maintenance), G3 (Noncompliance Notification), G19 (Record Keeping Requirements) and G20 (Signatory Requirements) are particularly relevant to comply with the Stormwater Pollution Prevention requirements of this permit. The duration of records retention was changed to five years from three years in G19 to be consistent with the five year permit cycle. Also, a three year records retention requirement was added to G19 for discharges whose permit coverage is terminated.

## How and Where to Apply for Coverage Under the Permit

The Notice of Intent (NOI) is the official permit application document required to request coverage under Ecology's Baseline Industrial Stormwater General Permit. Coverage will be authorized by Ecology in writing after receipt of the NOI from the operator of the industrial facility. Coverage will begin from the date of Ecology's written authorization or on the 31st day following receipt by Ecology of a completed NOI (also 31 days after compliance with public notice and SEPA requirements by new facilities), whichever occurs first. The submission deadlines for NOIs are included in Special Condition S1 of the Baseline General Permit.

The official responsible for the operation of an industrial facility, as defined in the permit, shall sign and submit the NOI to Ecology. In cases in which the owner and the operator (or tenant) of an industrial facility are not the same, Ecology requires the operator to be the permittee. The owner may request co-permittee status. In that instance, both parties, owner and operator, must sign the NOI.

A NOI signed by an appropriate corporate, local government or other official responsible for the facility shall be submitted to the following Ecology office:

Washington Department of Ecology
Water Quality Program
Stormwater Unit
P O Box 47696
Olympia, WA 98504-7696

## Small Business Economic Impact Statement (SBEIS)

Ecology prepared a small business economic impact statement for the original permit issued on the November 18, 1992. The SBEIS was updated when the permit was reissued in 1995. Since the proposed permit is being reissued with no changes to the 1995 permit requirements, the SBEIS was not revised. A copy of the SBEIS may be obtained by calling (360) 407-7156 or by download from Ecology's webpage (www.wa.gov/ecology/biblio/9567.html).

## Appendix A – Response to Public Comments

The Weyerhaeuser Company, Puget Soundkeeper Alliance, and Smith & Lowney, P.L.L.C. submitted timely public comments on the Industrial Stormwater General Permit. No testimony was given at the public hearings and no additional comments were received after the close of the comment period.

Comments have been grouped together where they address similar topics. Topic headings were provided and numbered to improve readability. No major changes were made to the permit because of the comments received. Two changes were made: Special Condition S2.C was revised to eliminate language specific to the 1995 issuance of this permit and Special Condition S4.B. was changed for clarification.

### S2.C. Conditional Coverage under this Permit

**Existing:**

The following facilities may obtain conditional coverage under this permit subject to the following:

- Completion of a SWPPP in a timely manner, and
- Completion of all required BMPs within a schedule acceptable to Ecology.
- Completion of the SWPPP and the required BMPs shall not extend beyond the schedule of Special Condition S1.B.2.

1. Facilities which have reapplied for coverage under this permit but have not complied with the SWPPP and BMP completion requirements of the previous industrial stormwater general permit.

2. Facilities which have not obtained required NPDES permit coverage.

**Changed to:**

Existing facilities which have not obtained required NPDES permit coverage may obtain conditional coverage under this permit subject to the following:

- Completion of a SWPPP in a timely manner, and
- Completion of all required BMPs within a schedule acceptable to Ecology.
- Completion of the SWPPP and the required BMPs shall not extend beyond the schedule of Special Condition S1.B.2.

### S4. <u>Discharge Prohibitions</u>

**Existing:**

B. Discharges of stormwater to sanitary or combined sewers shall be limited pursuant to Chapter 173-245 WAC (Submission of Plans and Reports for Construction and Operation of Combined Sewer Overflow Reduction Facilities) which requires "the greatest reasonable reduction of combined sewer overflows at the earliest possible date." Discharges of stormwater to sanitary sewers shall not occur without the approval of the municipality which owns or operates the sanitary sewer system.

**Changed to (change underlined):**

B. Discharges of stormwater to sanitary or combined sewers shall be limited pursuant to WAC 173-226-100 and Chapter 173-245 WAC (Submission of Plans and Reports for Construction and Operation of Combined Sewer Overflow Reduction Facilities) which requires "the greatest reasonable reduction of combined sewer overflows at the earliest possible date." Discharges of stormwater to sanitary sewers shall not occur without the approval of the municipality which owns or operates the sanitary sewer system.

**1. Issuing the Industrial Stormwater General Permit Without Update Is Unacceptable:**

**Comment -** Smith & Lowney, P.L.L.C.

*Stormwater discharges from industrial facilities can be some of the most polluted discharges covered by Ecology's NPDES program. Stormwater discharges can cause very serious environmental degradation – especially as a greater percentage of our land is covered by impervious surfaces and our salmonids disappear. Due to the lack of numerical effluent limitations, monitoring and reporting requirements, and the unavailability of stormwater pollution prevention plans for public review, we have been very frustrated over the past five years when confronted with covered dischargers who appear to cause pollution problems. When combined with the General Permit's lack of an unequivocal requirement that water quality standards be attained, the General Permit is essentially unenforceable by citizens in most situations. A primary policy goal of the Clean Water Act is the elimination of water pollution and the purpose of the National Pollutant Discharge Elimination System is just that. The General Permit should be rewritten to move covered facilities towards this goal.*

*In drafting this General Permit, Ecology seems more interested in assuring dischargers that compliance will be easily attained than in protecting the environment. While we appreciate the potential for backlash against regulatory requirements by the regulated community, such potential cannot justify the issuance of permit that fails both to meet legal standards and provide meaningful environmental protection.*

**Comment -** Puget Soundkeeper Alliance

*The Puget Soundkeeper Alliance is concerned that the Industrial Permit was reissued without any significant changes to the permit. The goal of the Clean Water Act is to eliminate the discharge of pollutants to the nation's waters; however, the Department of Ecology is ignoring this goal by reissuing essentially the same permit for another 5 years.*

*Stormwater discharges from industrial facilities are a significant contributor to the degradation of Puget Sound. To reissue the permit at a time when salmon species are threatened with extinction and many other species including Pacific herring, rockfish, and even Orcas are at risk is not a responsible action by the agency mandated to protect the waters of Puget Sound and the state.*

*The goal of the Clean Water must be met and the Department of Ecology must do its part to insure compliance. Individual National Pollutant Discharge and Elimination System (NPDES) permits are slowly reducing the discharge of effluents. There is absolutely no reason why industrial stormwater dischargers should not be held to the same standard.*

*The Puget Soundkeeper Alliance recommends that the General Industrial Stormwater Permit be rewritten to insure compliance with the goals of the Clean Water Act.*

**Response**

Ecology agrees that stormwater discharges from industrial sites can be a significant source of pollution. This is why the industrial stormwater general permit requires the permittee to implement best management practices to prevent contamination of stormwater to the maximum extent practicable and treat contaminated stormwater as necessary in order to achieve compliance with water quality standards. Ecology does not agree that there are any fatal flaws in the permit as written that require immediate attention to assure environmental protection. Because Ecology will reopen the permits in order to address new federal regulations that are to be implemented by March 2003, enhancing and clarifying language will be considered as part of that process.

**2. The Expiration Date Should Be March 10, 2003:**

**Comment -** Smith & Lowney, P.L.L.C.

*The expiration date of the General Permit should be March 10, 1993* (assume 2003 was intended)*, rather than the proposed expiration date of November 18, 2005. In the draft fact sheet, Ecology states that it intends to revise and reissue the General Permit by March 10, 2003, to comply with EPA implementation deadlines for its Phase II Storm Water Regulations. Draft Fact Sheet at 3. The expiration date should be changed to reflect this intent and to avoid illegal delay in the next reissuance.*

**Response**

Ecology is committed to a revision process that will address the new federal regulations within the federally mandated timeframe. This will result in reissuing these permits before they expire. However, as a standard practice, Ecology typically issues permits for the maximum time statutorily allowed and finds no compelling reason to do otherwise for these permits. The federal deadlines are sufficient to assure an early reissue.

**3. Compliance Schedule Inappropriate for Already Covered Facilities**

**Comment -** Smith & Lowney, P.L.L.C.

*The General Permit should not allow dischargers who have been covered under the 1995-issued permit to have additional time, per the Condition S1.B. compliance schedule, to prepare a stormwater pollution prevention plan ("SWPPP") or to implement best management practices ("BMPs") since the 1995-issued permit required these tasks to have been completed years ago. Facilities covered under the 1995-issued permit that have yet to prepare compliant SWPPPs or implement BMPs should be denied coverage under the new General Permit and be subject to enforcement action.*

*Condition S1.B. is confusing and apparently inconsistent in its classification of facility types with respect to the schedules of compliance indicated by the incorporated table. It appears from this condition and S2.C., providing for undefined "conditional coverage" for "[f]acilities which have reapplied for coverage under this permit but have not complied with the SWPPP and BMP completion requirements of the previous industrial stormwater general permit," that existing facilities that are "in violation of SWPPP requirements" will be allowed additional time to comply as a condition of the General Permit. Waste Action Project agrees that Ecology may*

*deem it proper to allow time for certain non-compliant facilities to come into compliance with the SWPPP and BMP implementation requirements. However, this should be done on a case-by-case basis via administrative orders and other enforcement mechanisms rather than provided to all facilities that are currently in violation of the central requirement of the 1995-issued permit. The General Permit as drafted appears to provide an amnesty period for those who failed to develop SWPPPs and implement BMPs in compliance with the 1995 permit. We strongly object to this aspect of the General Permit.*

**Comment -** Puget Soundkeeper Alliance

*The compliance schedule under S.1.B. allows dischargers covered under the 1995 permit to have additional time ranging from 90 days to 18 months to prepare a stormwater prevention plans and implement best management practices. The need for this compliance suggests that the 1995 General Industrial Stormwater Permit has never been properly monitored or enforced by the Department of Ecology.*

*The Puget Soundkeeper Alliance recommends that the Department of Ecology take enforcement action against dischargers who have not yet complied with their 1995 permit and attain compliance prior to reissuing a new permit.*

**Response**

Ecology does not agree that S.1.B. allows a new compliance schedule for those who were previously covered under this general permit and should already have implemented their BMPs. Those facilities must already have completed their SWPPP and BMP implementation and would be in violation of SWPPP permit requirements and as such would be subject to enforcement action. The intent of "existing facilities" under S1.B. was to address existing facilities that had never had permit coverage but were determined to require coverage. These facilities could be subject to enforcement action but would be eligible for a permit prescribed compliance schedule as found in the 1995 permit.

Ecology agrees that Special Conditions S2.C. should have been updated to reflect the new time period of the reissued permit. Specifically, S2.C.1. was included in the 1995 permit for facilities that had coverage under the 1992 permit but had failed to comply with SWPPP and BMP completion requirements. This window of opportunity has past and this language will be removed as it no longer applies. Conditional coverage for existing facilities that have never had coverage will remain. The appropriate Ecology action under this circumstance will vary depending on the specifics of the facility. Special Condition S2.C. will now read:

> Existing facilities which have not obtained required NPDES permit coverage may obtain conditional coverage under this permit subject to the following:
>
> - Completion of a SWPPP in a timely manner, and
> - Completion of all required BMPs within a schedule acceptable to Ecology.
> - Completion of the SWPPP and the required BMPs shall not extend beyond the schedule of Special Condition S1.B.2.

## 4. Compliance With Standards

### 4.a. Regulatory Creep

**Comment –** The Weyerhaeuser Company

*Ecology has an interest and responsibility to ensure that stormwater permittees fully comply with the terms and conditions of these permits. Stormwater pollutant discharges are recognized as perhaps the most significant opportunity area for reducing pollutant loads and, consequently, improving water quality in Washington waterbodies.*

*While the content of these General Permits have remained nearly static for 8 years there now appears to be some "regulatory creep" underway in what Ecology expects of Permittees. This has become evident through various agency oversight activities. There is a recent example at a Weyerhaeuser facility where, based on a site inspection, the agency issued a regulatory order directing that additional BMPs be identified and applied (without alleging water quality standards violations or human health impacts; i.e., Special Condition S5.A of the Industrial Permit). At another facility Ecology arbitrarily converted the stormwater permitting coverage from the General Permit to an individual permit as a means to impose a stormwater sampling program. By all accounts the facility had implemented a robust set of capital and operational BMPs and had no atypical stormwater pollutant discharges.*

*Permittees should be provided with clear direction through permit terms and conditions such that confident compliance planning and implementation can occur. Ecology's inspectors, permit-writers, and management should ensure consistent application of the General Permits.*

*The request in this comment is that Ecology reaffirm the basic realities and responsibilities of this permit. As we read them they are (references are to the Industrial Baseline Permit):*

- *The "ultimate goal" is for permittees to achieve compliance with all water quality standards. Special Condition S5.A.*
- *Ecology expects that compliance with water quality standards will be achieved through development, implementation and maintenance of SWPPPs. If that in fact does not occur, compliance with the General Permit constitutes an ongoing effort towards compliance with standards on a WAC 173-201A compliance schedule. Special Condition S5.A.*
- *The responsibility for deciding on appropriate BMPs to "reduce the potential for the discharge of significant amounts of pollutants" rests with the Permittee. Special Condition S.9.D.2.*
- *If there is a reasonable potential to cause a violation of a water quality standard the obligation of the Permittee is to describe additional available and reasonable BMPs. Implementation of these BMPs is strongly encouraged but not required. Special Condition S.9.D.3.a and b.*
- *The Permit allows for voluntary sampling/analysis of a stormwater discharge to determine if a significant amount of a pollutant is present. Special Condition S.6.*
- *Ecology is granted an ability to intervene to protect human health or where standards violations are obvious and severe. Special Condition S5.A.*

- *Ecology's desire to require sampling/monitoring and an assessment of standards compliance or violations will be implemented through a permit modification. Special Condition S7.*

*If the agency's intentions for permit implementation stray from these principles then those new expectations should be clearly articulated through appropriate changes in the draft permit, and opportunity for public comment provided.*

**Response**

Ecology agrees with Weyerhaeuser that the permittee is responsible for achieving compliance with standards through the implementation of BMPs. Ecology does not agree that using regulatory authority to require an industry to apply BMPs to do the work of coming into compliance with standards represents "regulatory creep". Although the permit expresses compliance with water quality standards as the "ultimate goal" for permittees, this should not be interpreted as an opportunity for the permittee to do nothing or to fail to make satisfactory progress.

Since many permittees have had coverage since 1992, it is expected that most permittees are by now in compliance with water quality standards and will remain in compliance. The permit manager has the responsibility to apply best professional judgement and determine if an industry is achieving the goal of compliance with standards and if not, are they are making satisfactory progress. This is not regulatory creep but a reasonable application of permit conditions.

Because of the broad breath of industrial activities that are included for coverage under this general permit, the role of the permit manager to evaluate and enforce permittee requirements is an essential component of permit success. The permittee always has the option to object to the permit manager's decision if they feel it is unfair or unwarranted. Ecology will not revise permit language at this time but will consider more clearly defining expectations for the permittee during the rewrite to follow issuance of this permit. See also response to comments for 4.b. Requiring Compliance with Standards.

**4.b. Requiring Compliance with Standards**

**Comment -** Smith & Lowney, P.L.L.C.

*The General Permit should clearly and unequivocally require compliance with state surface and ground water quality standards. Per 40 C.F.R. § 122.44(d), WAC 173-226-070(2), and WAC 173-201A-160, compliance with state water quality standards must be a requirement of the General Permit. Instead of a clear statement such as "discharges that cause or contribute to a violation of water quality standards are prohibited," the General Permit refers to compliance with water quality standards as the "ultimate goal." S5.A. NPDES permits must require compliance with water quality standards, not set them aside as an unenforceable "ultimate goal." The statement in S5.A. that, "[f]acilities that are in compliance must remain in compliance," does not constitute an adequate requirement to meet standards because there is no monitoring requirement to determine whether a particular facility qualifies as one that is or has been "in compliance." Nothing in the General Permit makes it illegal per se for a discharger to cause a violation of water quality standards as the law requires.*

**Comment -** Smith & Lowney, P.L.L.C.

*The General Permit should require permittees to implement whatever BMPs, including treatment BMPs, are necessary to meet water quality standards. WAC 173-201A-160(3)(b), which*

*specifically addresses the implementation of water quality standards for stormwater discharges, states that BMPs "**shall** be applied so that when all appropriate combinations of individual best management practices are utilized, violation of water quality criteria shall be prevented. If a discharger is applying all best management practices appropriate or required by [Ecology] and a violation of water quality criteria occurs, the discharger **shall** modify existing practices or apply further water pollution control measures, selected or approved by [Ecology], to achieve compliance with water quality criteria." WAC 173-201A-160(3)(b) (emphasis added). Furthermore, WAC 173-201A-160(3)(d) states that, "[a]ctivities which cause pollution of storm water shall be conducted so as to comply with the water quality standards."*
*In contrast, the General Permit at Condition S9.D.3.b. (p. 19) allows the permittee to judge whether the standard SWPPP requirements are sufficient to prevent violations of water quality standards and then leaves it to the permittee's discretion whether to implement "additional available and reasonable BMPs" to ensure compliance with water quality standards. S9.D.3.b. goes on to assure dischargers that, "[i]mplementation of such BMPs are (sic) strongly encouraged but not required." This permit provision is squarely at odds with Ecology's regulation and must be changed.*

**Comment -** Puget Soundkeeper Alliance

*The General Industrial Stormwater Permit must require compliance with state surface and ground water quality standards. As written now, the draft permit states that compliance with the water quality standards is the ultimate goal, but it does not make compliance with water quality standards enforceable.*

*The Puget Soundkeeper Alliance recommends that the permit make compliance with the water quality standards a requirement that is enforceable.*

**Comment -** Puget Soundkeeper Alliance

*Nothing under this condition* (S.9. Stormwater Pollution Prevention Plan (SWPPP) for Industrial Facilities) *actually requires facilities to implement the BMPs necessary to meet water quality standards.*

*The Puget Soundkeeper Alliance recommends that S.9. be rewritten to include the requirement that BMPs will be implemented where needed to meet water quality standards.*

**Response**

The industrial stormwater general permit does not authorize the illegal discharge of pollutants to waters of the state. The permittee is responsible for determining BMPs that are necessary for the facility to reduce the potential for the discharge of significant amounts of pollutants. “Significant amount” is key here and it is defined in the permit.

> *<u>Significant Amount</u> means an amount of a pollutant in a discharge that is amenable to available and reasonable methods of prevention or treatment; or an amount of a pollutant that has a reasonable potential to cause a violation of surface or ground water quality or sediment management standards.*

A permittee that is discharging pollutants in an amount that has a reasonable potential to violate water quality standards has either failed to identify the necessary BMPs to achieve compliance or has failed to implement BMPs they have identified as necessary. If the permittee fails to take action, then they are failing to comply with the intent of the permit and Ecology can issue an

Order to require action. A permit that includes the diversity of facilities types as are included in the industrial stormwater general permit must rely on the best professional judgement of the permit manager to apply permit conditions effectively and fairly.

It is true that the permit lays much of the responsibility of coming into compliance with standards on the permittee. Ecology does not view this as a failure to require compliance but as an appropriate approach to balance the need for specific requirements with the reality of a very diverse array of industries covered under this general permit. As noted in the response to 4.a. Regulatory Creep, expressing compliance as a "goal" does not make failure to achieve compliance acceptable. Permit flexibility and permittee's implementation of BMPs is held accountable by technical assistance and enforcement actions by Ecology as necessary. Although permit language may profit from revision to more clearly state the expectation of compliance with standards, that consideration will be deferred to the follow-up revision to implement the new federal requirements. No change at this time.

**4.c. Compliance Schedule**

**Comment -** Smith & Lowney, P.L.L.C.

*The General Permit may include a compliance schedule for attainment of water quality standards, but this schedule must have an endpoint that should not be later than 2002. WAC 173-226-180(1) authorizes compliance schedules in general permits, but WAC 173-226-180(2) requires that such schedules "reflect the shortest reasonable period of time necessary to achieve compliance." WAC 173-201A-160 is also applicable to the General Permit. This is recognized in Condition S5.A. of the General Permit, which states, "[c]ompliance with the requirements of this permit constitutes ongoing efforts towards compliance with standards on a compliance schedule as authorized by Chapter 173-201A WAC and approved by Ecology." WAC 173-201A-160 authorizes compliance schedules to meet water quality standards, but specifies that such schedules "may in no case exceed ten years, and shall generally not exceed the term of any permit." WAC 173-201A-160(4)(c). Ecology first issued the general permit for industrial stormwater discharges in 1992. Thus, a schedule for compliance with water quality standards cannot extend beyond 2002, the ten year anniversary of that issuance. The General Permit sets forth a compliance schedule, but never sets an endpoint when compliance with water quality standards is required. As the General Permit now stands, a discharger may be under a compliance schedule from 1992 through the 2005 expiration date, a thirteen year period, without ever having to reach the endpoint of final compliance. The endless compliance schedule perpetuated by the General Permit violates the spirit and letter of the Clean Water Act and its implementing regulations*

**Comment -** Puget Soundkeeper Alliance

*The permit also fails to state when compliance must be achieved. The General Industrial Stormwater Permit was first written in 1992, yet a compliance date has never been set.*

*The Puget Soundkeeper Alliance recommends that a compliance schedule be developed and inserted into the draft permit.*

Response

Ecology agrees with Smith & Lowney and Puget Soundkeeper Alliance that a compliance schedule can not go on forever. The permittee is expected to achieve compliance with standards through the application of best management practices within a reasonable period of time. As

noted in response 4.a. Regulatory Creep, most permitted facilities should have attained compliance by this time. However, setting an absolute compliance schedule for all facilities would be too simplified to account for the diversity of facilities that are covered under this permit or would so complicated that it would be difficult to interpret. As stated in response 4.b. Requiring Compliance with Standards, Ecology believes the permit provides the correct mix of flexibility and accountability for a permit manager to assure compliance through site technical assistance and enforcement actions as necessary. Ecology will consider revising language to more clearly state permit objectives during the follow-up revision to implement the new federal requirements but will implement no change at this time.

**5. Require Numeric Effluent Limits**

**Comment -** Smith & Lowney, P.L.L.C.

*The General Permit should set numerical effluent limitations for pollutants for which industrial stormwater discharges have reasonable potential to violate. Since WAC 173-201A-160(3) and 173-226-070(2)(a) mandate that the General Permit require compliance with water quality standards, WAC 173-226-070(6)(a) applies to require the inclusion of numerical effluent limitations on pollutant quantitative mass or concentrations. At a minimum, the numerical "Discharge Targets" defined in the General Permit should be included as numerical effluent limitations.*

**Comment -** Puget Soundkeeper Alliance

*In addition, there are no numerical requirements of effluent limitation on pollutants.*

*The Puget Soundkeeper Alliance recommends that the permit be amended to include specific numerical limits on stormwater discharges.*

**Response**

WAC 173-201A-160(3) identifies application of best management practices (BMPs) as the primary approach to achieve compliance with standards for nonpoint and stormwater discharges. This approach is also consistent with U.S. Environmental Protection Agency guidance on implementing water quality-based effluent limitations in stormwater permits. The industrial stormwater general permit correctly applies narrative requirements through implementing BMPs to achieve compliance with standards.

None of the referenced administrative code in the comments above requires that a general permit include numeric limits to assure compliance with water quality standards. WAC 173-226-070(2)(a) lays the basis for including water quality-based effluent limitations **"if necessary"** to achieve compliance. Likewise, WAC 172-226-070(6)(a) does not require the inclusion of effluent limits but rather it lays out how water quality-based effluent limits are to be applied in a general permit **if** limits are included. Ecology believes that the appropriate focus should remain on the choosing and applying of best management practices as outlined in the permit. Although Ecology will consider monitoring options and possible application of limits in the future, we do not believe that they are essential to compliance with standards under this general permit. Numeric limits will not be added at this time.

### 6. Permit Must Require Monitoring

**Comment -** Smith & Lowney, P.L.L.C.

*Ecology should include monitoring requirements in the General Permit as authorized by WAC 173-226-090. Actual monitoring of stormwater discharges is necessary to gauge compliance with water quality standards. How can anyone determine whether a discharge is an actual environmental problem without monitoring?*

**Comment -** Puget Soundkeeper Alliance

*The permit does not require any sampling or monitoring of pollutant discharges, so it is not certain how the Department of Ecology will determine or a facility will know whether or not it is in compliance with water quality standards.*

*The Puget Soundkeeper Alliance recommends that the permit be rewritten to include monitoring requirements to insure compliance with water quality standards.*

**Comment -** Puget Soundkeeper Alliance

*Condition S.7.2. states that a monitoring and reporting plan may be required of a facility that is determined to have high potential for violating water quality standards, but not until November 18, 2005. Why delay a monitoring process for another five years? Why not identify facilities with high potential now?*

*The Puget Soundkeeper Alliance recommends that all General Industrial Stormwater Permittees be required to develop a monitoring and reporting plan, so the Department of Ecology can identify potential water quality standard violators.*

**Response**

The industrial stormwater general permit does require monitoring. At a minimum, all facilities covered under this permit are required to conduct two inspections per year. The wet season inspection must verify that the SWPPP accurately describes pollutant sources and that controls to manage stormwater and prevent stormwater pollution are implemented and adequate. The permittee must also inspect during the dry season to verify that no illicit discharges to stormwater conveyance are occurring.

The United States Environmental Protection Agency under the multi-sector general permit for stormwater discharges from industrial activities has required some monitoring. Ecology will be evaluating that information when it becomes available. Based on this analysis and Ecology permit manager information, Ecology will determine if additional testing should be conducted by Ecology. The results of this effort will be available for comment as Ecology revises the permit to comply with the new federal regulations. Based on the available information and public comment, Ecology will determine what if any monitoring should be added to the permit. No additional monitoring will be required at this time.

**7. Require Submission of SWPPPs**

**Comment -** Smith & Lowney, P.L.L.C.

*The General Permit should require permittees to submit SWPPPs and regular inspection reports to Ecology. Development and implementation of a SWPPP are the central requirements of the General Permit. Determining whether a discharger has complied with these requirements should be simplified by having these documents on file at Ecology's offices. As the General Permit is now drafted, it is virtually impossible for a concerned citizen to determine whether a discharger has developed or is implementing a SWPPP because they are generally not available for public review.*

*The General Permit's substitute for SWPPP submission, S9.B.2.'s awkward statement that "[t]he public may also obtain a copy of a permittee's SWPPP by request from Ecology," is unsatisfactory for at least three reasons. First, it does not provide Ecology with an easy means of identifying dischargers who are in violation of SWPPP development and self-inspection requirements. Second, any permittee who is notified of a public request to review its SWPPP may be able to evade detection of violations by quickly preparing a SWPPP that it did not have at the time of the request. Third, Waste Action Project is concerned that this permit condition may not create an adequate legal right for citizens to get access to these documents. Certainly, the Public Disclosure Act ensures access to documents already in Ecology's possession, but what compels Ecology to obtain a SWPPP from a permittee upon citizen request? Is it Ecology's position that this permit requirement imposes an enforceable duty on the Department to request a discharger's SWPPP when anyone asks it to?*

**Comment -** Puget Soundkeeper Alliance

*There is no requirement in the permit for the permitted facility to submit its SWPPP to the Department of Ecology so that it available not only for agency oversight, but public review as well. This is a significant flaw in the existing permit, which hinders citizen involvement in the enforcement of the Clean Water Act.*

*The Puget Soundkeeper Alliance recommends that S.9. be amended to include a provision requiring the submittal of a SWPP prior to the issuance of the General Industrial Stormwater Permit.*

**Response**

Ecology determined that collecting large quantities of stormwater pollution prevention plans (SWPPPs) at the Ecology office provided very little value added and would result in considerable cost in time and effort to maintain and administer. Maintaining a central repository of SWPPPs would be challenging because the permittee is required to continually examine the success of their BMPs and update the SWPPP as necessary. The large number of facilities with coverage under the industrial stormwater general permit combined with the expectation that these documents will require continual updating makes collection of SWPPPs a labor intensive task that would divert considerable Ecology resources just to the maintenance of the repository. The most valuable location for these documents is onsite available for review during an Ecology inspection.

However, the permit does recognize the need for public access. Special Condition S9.B.2. does serve that purpose and does require Ecology to obtain a SWPPP upon request. Any citizen

concerned about a discharger has only to request the information for that discharger. Ecology does not believe this is an unreasonable burden; permit language will remain as it is.

**8. Permit Fails to Protect Impaired Waterbodies**

**Comment -** Smith & Lowney, P.L.L.C.

*Facilities that discharge to waterbodies on the 303(d) list should not be eligible for coverage under the General Permit. The 303(d) list includes waterbodies that do not meet water quality standards. 33 U.S.C. § 1313(d). Those who discharge industrial stormwater to such listed waters should be covered under NPDES permits specifically tailored to ensure that their discharges do not exacerbate identified water quality problems.*
*Ecology has developed total maximum daily loads ("TMDLs") for some of the 303(d)-listed waterbodies. WAC 173-226-070(3)(c) requires that a general permit for a discharge to a waterbody with a TMDL "implement any legally applicable requirements necessary to implement total maximum daily loads." The General Permit must be changed to ensure that this requirement will be met for qualifying dischargers.*

**Comment -** Puget Soundkeeper Alliance

*The draft permit fails to address two significant issues: the enforcement of the "take" provision of the Endangered Species Act and the relationship between the 303(d)-listed waterbodies and stormwater discharges.*

*The Puget Soundkeeper Alliance recommends that facilities discharging to 303(d) listed waterbodies or taking species listed as threatened or endangered not be issued a permit.*

**Response**

It is true that the permit does not specifically single out discharges to 303(d) listed waterbodies or waterbodies where a TMDL has been applied. However, the permit does require the permittee to come into compliance with standards and that is typically considered protective of impaired waterbodies. As with all general permits, Ecology reserves the right to require an individual permit when site specific conditions indicate. A 303(d) listed water body or TMDL where the pollutant of concern is likely to be present in the industrial stormwater discharge, could be such a condition if typical application of BMPs would be insufficient to achieve environmental protection and compliance with waste load allocations. This would have to be decided on a case-by-case basis.

**9. Permit Not Protective of Threatened and Endangered Species**

**Comment -** Smith & Lowney, P.L.L.C.

*The General Permit should be changed to ensure that permitted discharges do not result in the "take" of fish species listed as threatened or endangered under the federal Endangered Species Act ("ESA"). WAC 173-226-070(3)(b) requires that general permits meet the requirements of federal laws besides the Clean Water Act. There are now numerous ESA-protected stocks of salmonids and other fish species, as well as miles of waterbodies designated as critical habitat for these, throughout Washington. Industrial stormwater discharges, by their potential to carry pollutants to which ESA-listed fish are especially sensitive and to substantially contribute to harmful scouring and peak flow effects, likely contribute to the "take" of ESA-listed fish in*

*violation of ESA § 9 and applicable ESA § 4(d) rules. By authorizing discharges that result in "take" and by failing to ensure in the General Permit that discharges harmful to ESA-listed species are prevented, Ecology subjects itself to liability for illegal "take," as well as violating WAC 173-226-070(3)(b). See, Strahan v. Coxe, 127 F.3d 155 (1st Cir. 1997).*

**Response**

Ecology issues wastewater (stormwater) discharge permits based on state law and applicable federal regulations and guidance. State law implements the federal Clean Water Act and must be at least as stringent as federal requirements. Compliance with the state water quality and sediment standards is considered protective of aquatic organisms and thereby protective of endangered species that frequent the state's waters. The industrial stormwater general permit requires the permittee to identify and implement BMPs necessary to comply with standards. Public notice and SEPA requirements for new facilities also provide additional opportunity to address site specific concerns. Protection is assured by compliance with the permit and additional language is not necessary.

**10. Discharge to Municipal Sewer Systems Inappropriate**

**Comment -** Smith & Lowney, P.L.L.C.

*The General Permit must incorporate pretreatment standards for discharges to municipal sewer systems. WAC 173-226-070(4) states, "general permits authorizing the discharge into a municipal sewerage system shall satisfy the applicable pretreatment requirements of the [Clean Water Act]." These pretreatment requirements are found, perhaps among other places, at 40 C.F.R. § 403. The General Permit authorizes discharges to municipal sewerage systems, Condition S4.B., but nowhere requires compliance with applicable requirements of 40 C.F.R. § 403 or other "applicable pretreatment requirements" in violation of WAC 173-226-070(4).*

**Comment -** Smith & Lowney, P.L.L.C.

*The General Permit must incorporate the prohibition on discharges identified in WAC 173-226-100. WAC 173-226-100 sets forth both an absolute prohibition on the authorization of particular discharges via general permit and a prohibition on particular discharges to municipal sewerage systems. These mandatory prohibitions appear nowhere in the General Permit.*

**Response**

There should be no question that the intent of S4.B. is to typically prohibit discharge to a municipal sewerage system since the heading is "Discharge Prohibitions". However, the prohibition as described in WAC 173-226-100 is not an absolute prohibition on discharges of stormwater to a municipal sewerage system. Ecology does agree, however, that the complete limitation is not clear as currently written and will revise S4.B. to read (additional language underlined):

> Discharges of stormwater to sanitary or combined sewers shall be limited pursuant to WAC 173-226-100 and Chapter 173-245 WAC (Submission of Plans and Reports for Construction and Operation of Combined Sewer Overflow Reduction Facilities) which requires "the greatest reasonable reduction of combined sewer overflows at the earliest possible date." Discharges of stormwater to sanitary sewers shall not occur without the approval of the municipality which owns or operates the sanitary sewer system.

Ecology does not agree that additional language must be added to "satisfy the applicable pretreatment requirements". The permit does require that a discharger receive permission to discharge stormwater to a municipal sewerage system and not add to problems with combined sewer overflows. This requirement assures that the quantity of discharge will be acceptable to the sewerage system and not lead to upset. The permit also requires the application of BMPs to minimize the introduction of pollutants into stormwater and to apply treatment BMPs as necessary before discharge. No additional changes.

**10. Require All Permittees to Apply Revised Stormwater Manual**

**Comment -** Smith & Lowney, P.L.L.C.

*The General Permit should require all permittees to update their SWPPPs to meet the requirements of the soon-to-be-released updated Stormwater Management Manual for The Puget Sound Basin ("SWMM") upon its issuance, expected in January, 2001. (K. Johnson 9/12/00 workshop). As the General Permit is now written, only new facilities submitting their NOIs approximately February, 2001, or thereafter would be required to use the updated SWMM. This is because Condition S9.B.4. only requires use of the updated SWMM by those who are not required to select BMPs until at least 120 days after the updated SWMM is available, while S1.B. requires a permittee's SWPPP to be prepared (including selection of BMPs) within 90 days of permit coverage. Thus, any permittee covered from the November 18, 2000, effective date will not be required to use the updated SWPPP. Since Ecology has chosen to make the SWPPP and implementation of selected BMPs the central requirement of the General Permit and is reissuing the General Permit near in time to the SWMM update, it would make sense to require its use by all permittees. To do otherwise, as the draft General Permit proposes, exposes Ecology's true primary concern – to make the General Permit requirements as easy as possible for dischargers to meet – and the secondary status of environmental protection in this permitting action.*

**Response**

The industrial stormwater general permit requires the permittee to achieve compliance with water quality standards, ground water standards, and sediment standards through the application of best management practices (BMPs). It would not make sense to require an existing site that is in compliance to redo their SWPPP. The focus of time and effort should be on sites that are not attaining compliance. Here application of the revised stormwater management manual for western Washington is appropriate and would be required.

Ecology takes issue with the suggestion that this permitting action gives "secondary status" to environmental protection. Ecology would not consider reissuing this permit in its current form if it were not environmentally protective. The work of Ecology is multifaceted and there are many competing demands for the time and effort of staff and other resources. Since the resources are not unlimited, prioritizing and scheduling these efforts are critical to Ecology's mission: "… to protect, preserve and enhance Washington's environment, and promote the wise management of our air, land and water for the benefit of current and future generations." Deferring a full consideration of enhancing and clarifying language to consideration with implementation of the new federal regulations does not sacrifice environmental protection but allows Ecology to more effectively complete the task within the full spectrum of work to be done.